

**Local Rule Review Committee  
Organizational Meeting May 13, 2010  
Minutes**

**MEMBERS PRESENT:** Ed Caroe, Chris Vorndran, Jon Netts, Stan Ksyniak, Linda Provencher, and Chris Herrera.

**MEMBERS ABSENT:** Jim Netherton, Richard McCleery, Laureen Kornel and Virginia Tee.

**STAFF PRESENT:** Tim Telfer, Environmental Planner and Staff Liaison, Christie Mayer, Administrative Assistant.

**OTHERS PRESENT:** Christopher Boland (FFWCC), Scott Calleson (FFWCC), Hap Cameron and Kevin Peck.

1. Call to Order – Tim Telfer called the meeting to order at 1:31 p.m.
2. Roll Call – A quorum was obtained with six members present. Mr. Telfer noted that six is the minimum number of members that must be present to have a quorum.

In response to the question, it was noted that in order for a vote on a motion to carry, it would need to have majority of those members present and voting.

3. Welcome: Tim Telfer – Mr. Telfer welcomed and thanked the committee members for volunteering to be a part of this committee. All information relative to the committee will be posted on the county website at: [www.flaglercounty.org/Government/BoardofCountyCommissioners/AdvisoryBoards&Councils/LocalRuleReviewCommittee](http://www.flaglercounty.org/Government/BoardofCountyCommissioners/AdvisoryBoards&Councils/LocalRuleReviewCommittee).

Tim mentioned that the committee had already received copies of the following documents and inquired if there were any questions. In addition, the Orientation Packet (Attachment 1) for new advisory board members had been sent to the committee in advance.

- a. Florida Statute 379.2431 which established the Local Rule Review Committee (Attachment 2);
- b. Letter from the Florida Fish & Wildlife Conservation Commission (FFWCC) dated March 8, 2010 (Attachment 3); and
- c. Description of the FWC Manatee Protection Rule Development Process (2010) (Attachment 4).

The committee is currently in Step III of the process; having received notice of the rule making and establishing the committee. The committee will be moving to Step V with the FFWCC sending the proposal to the Local Rule Review Committee.

4. Introductions – All committee members introduced themselves, giving a bit of background of their experience as it relates to the duties of the committee.

5. Overview of Committee Charge: Tim Telfer – The charge of this committee will be to review the proposed rule and respond in writing to the Florida Fish & Wildlife Conservation Commission within the 60-day timeframe established by FFWCC. Along with the majority opinion report, minority comments must also be forwarded to the FFWCC.

Mr. Telfer also reviewed the charge of the committee as outlined in the Florida Statutes.

Mr. Vorndran asked as to the possibility of this committee influencing the position of the FFWCC. Mr. Calleson noted that the FFWCC has been through this process with other counties. Comments made by the county committee are sent to the (7-member) FFWCC Board. Historically, in the end, more times than not, the FWC Board has been in concurrence with the comments made by the LRRC. Typically, there have been more areas of agreement than disagreement. Mr. Calleson noted that both the majority and minority recommendations and the FFWCC response to the LRRC comments are forwarded to the FWC Board.

Mr. Caroe requested to see the approved plans and data used by the FFWCC. In addition, he would like to see the agreements between the FFWCC and other counties. Mr. Calleson will be glad to provide a website link that includes the LRRC recommendations, staff response, etc., relative to other counties.

Mr. Netts inquired as to the number of counties who have adopted manatee plans, how many are generic as opposed to more specific. Mr. Calleson feels none of them are generic. The types of regulations are similar but how they are applied depends on the specific county. The preliminary data looked at will be part of the packet forwarded to this committee for their use.

Mr. Calleson noted that the reason these committees were established was to get input before the FFWCC makes their decisions. The committee is free to make any recommendations they would like to present to the FFWCC.

Mr. Cameron mentioned the past actions of the Flagler County Board of County Commissioners included approval for staff to work with the state and federal agencies to evaluate risks to manatees and make appropriate recommendations for protective measures, including possibly drafting a manatee protection plan study, contingent upon the receipt of state or federal grant funds. In addition, he noted that private money was offered to the county for the manatee protection plan but it was not accepted. Now, a manatee protection plan is being offered by the FFWCC. Mr. Calleson noted that a manatee protection plan involves different things and one is a plan for the construction of docks, which was discussed in 2007. What we are talking about here for this committee are speed zones, which are the FFWCC's authority to establish. These two issues are similar but not the same.

Mr. Netts then inquired if the proposal will include areas for the proposed speeds but does not get into any other issues. Mr. Calleson agreed.

Mr. Calleson noted that they will be in attendance at the next meeting to review the data and the report with the LRRC so the members can better understand how they came to their recommendations. The report is anticipated to be about 10-15 pages.

Mr. Caroe inquired as to who will be responsible for enforcing the new speed zones. Mr. Calleson reported that any law enforcement agency can enforce the speed zones.

Ms. Cocchiola asked if the FFWCC has looked at anything other than speed zones, such as sensors. Mr. Calleson reported that they had reviewed a great number of alternatives but nothing was found to be as effective as the speed zones. They continue to feel that boat speeds are the main reason for the damage to or deaths of the manatees but not the only reason.

Mr. Ksyniak inquired as to whether there is a timeframe after the LRRC report to the FFWCC for the action of their Board. Mr. Calleson noted that once the FFWCC receives the LRRC report then another clock starts on the time for their response. The Board only meets five times a year, at which time these reports are reviewed. He feels that the Board will probably consider the County recommendations and the response by the FFWCC at their November 2010 meeting.

6. Elections – Mr. Telfer outlined the duties of these positions, noting that the Recording Secretary is more in-line with a Vice-Chair position. Staff will assist with being the official record keeper for all minutes, posting of meeting notices, etc. Mr. Telfer suggested possibly balancing the two positions with one being a “manatee/environmental advocate” and the other a “waterway user”. He then opened the floor for nominations.

- a. Chair – Mr. Caroe expressed the feeling that an employee of a municipality should not be the chair, asking Ms. Provencher if she was employed by the City of Flagler Beach. The following motions were made for the position of Chair:

- Motion by Ed Caroe – nominated Linda Provencher; motion seconded by Jon Netts.

- Motion by Linda Provencher – nominated Jon Netts; motion seconded by Chris Herrera.

- Motion by Chris Herrera – nominated Ed Caroe; motion died for lack of second.

There being no other motions for the position of Chair, nominations were closed. The voting for the position of Chair showed two votes for Linda Provencher and four votes for Jon Netts. Therefore, Mr. Netts will be committee Chair.

- b. Recording Secretary -- Mr. Telfer announced that Mr. Richard McCleery had expressed an interest in the position of Recording Secretary. The following motions were made for the position of Recording Secretary:

- Motion by Chris Herrera – nominated Richard McCleery; motion seconded by Stan Ksyniak.

- Motion by Linda Provencher – nominated Ed Caroe; motion seconded by Jon Netts.

There being no other motions for the position of Recording Secretary, nominations were closed. The voting for the position of Recording Secretary showed one vote for Richard McCleery and five votes for Ed Caroe. Therefore, Mr. Caroe will be committee Recording Secretary.

7. Plan for Future Meetings – Mr. Telfer reminded the committee that their 60-day clock to respond to the FFWCC will begin upon receipt of the report by the County. Mr. Calleson noted that they anticipate the report to be delivered on Monday, May 24<sup>th</sup>. The reason for the delay in finalizing the Flagler County report is due to their involvement with the oil spill in the Gulf of Mexico which is straining their resources.

The committee expressed the desire to have the report for a day or two prior to the next meeting so they could begin to read and digest the contents. Mr. Telfer informed the committee that staff would transmit the report electronically the same day as it is received from the FFWCC.

After taking into consideration the information provided by committee members not present today and after further discussion, it was the consensus to have the next meeting on Wednesday, May 26, 2010 at 1:00 p.m. The exact room location would be identified and provided to the committee.

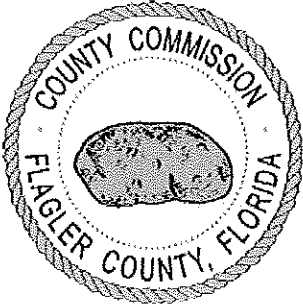
8. Sunshine Law & Public Records Law: Donna Wysong – Ms. Wysong reviewed the importance of the Sunshine Law and Public Records Law as outlined in Attachment 5, answering various questions from the committee members and public in attendance.

Committee members were asked to provide to Tim Telfer or Christie Mayer copies of all correspondence (including emails) they receive in order to maintain them for public record purposes.

Committee members were cautioned that two or more members could not speak to a civic organization on this subject due to the Sunshine Laws and that staff should be notified of any such speaking engagements so it can be publicly noticed.

If any member feels they have a conflict on voting on an issue before this committee, they can excuse themselves from the discussion and vote only by completing Form 8B (Attachment 6). Otherwise, all members present must vote on all motions before the committee.

9. Citizen Comments – None other than those noted in the minutes previously.
10. Adjournment – Upon motion by Mr. Caroe, seconded by Ms. Provencher, the meeting adjourned.



# *Orientation Packet*

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Your Role as a Flagler County  
Advisory Board Member



# *Flagler County*

## Board of County Commissioners



709 East Moody Boulevard • Bunnell, Florida 32110 • (386) 313-4000 • fax: (386) 313-4100 • [www.FlaglerCounty.org](http://www.FlaglerCounty.org)

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Dear Advisory Board Member,

Congratulations on your appointment to an advisory board of the Flagler County Board of County Commissioners. Citizen participation plays an instrumental role in our decision making process.

As an advisory board member your job is to work, in conjunction with other advisory board members, to make recommendations or suggestions to the County Commission on various topics of public concern.

This orientation guide contains the information you will need to better understand your responsibilities as an advisory board member. It also includes some of the rules which govern most board and committee members, such as parliamentary procedures and Florida's Sunshine and Public Records Laws. Please do not hesitate to contact our staff at any time should you have a question about something in this guide or any other issue related to your advisory board.

The Flagler County Board of County Commissioners extend our best wishes for success and our appreciation for your involvement.

Sincerely,

George Hanns, Chairman

Alan Peterson  
District 1

Melissa Holland  
District 2

Barbara Revels  
District 3

Bob Abbott  
District 4

George Hanns  
District 5

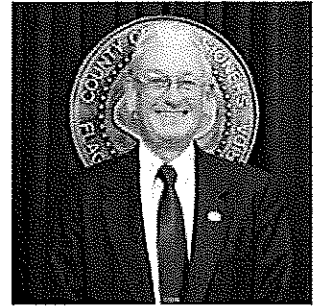
# The Flagler County Commission

The Flagler County Board of County Commissioners is comprised of five members. Commissioners are elected at-large, meaning they represent all residents of the county but must reside in the district they represent.

The County Commission is the legislative and policy making body for Flagler County government. The County Administrator is hired by the County Commission to carry out the policies and programs of the Commission. The County Administrator oversees the day to day operations of all County services. The County Commission also appoints the County Attorney, who reports directly to the County Commission, as its chief legal advisor.

The County Commission normally meets on the first Monday of the month at 9 a.m. and on the third Monday of the month at 4:30 p.m. in the Government Services Building in Bunnell (with the exception of holidays). Meetings are also broadcast live and replayed on Flagler County Government Television (FCTV). FCTV is available to Bright House Networks subscribers. Flagler County also streams audio and video of the meetings on its website, FlaglerCounty.org, both live and available on demand.

Alan Peterson  
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apeterson@flaglercounty.org



Milissa Holland  
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mholland@flaglercounty.org



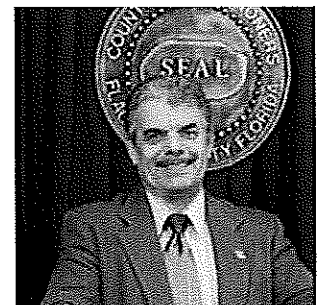
Barbara Revels  
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Bob Abbott, Vice Chairman  
District 4  
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George Hanns, Chairman  
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# *Your Role as an Advisory Board Member*

Advisory Board members are appointed by the Flagler County Commission to provide recommendations on diverse matters of public concern. Quasi-judicial boards, such as the Planning Board as well as the County Commission, perform functions in a manner similar to courts, but more informally.

## **Board Members Should:**

- Speak openly and clearly during the meeting. Remember to speak directly into the microphone, if one is present.
- Listen to members of the public who attend the meetings.
- A member must vote on all motions as abstentions are not allowed by rule of law. This includes the advisory board Chair and all board members. Accordingly, you must vote unless you have a perceived conflict of interest. (Learn more in the “Productive Meetings” section of this guide).
- Notify staff of any anticipated absence.
- File a financial disclosure form, if applicable.

## **Financial Disclosure:**

Some board members are required by law to file a Florida financial disclosure forms annually issued by the Florida Commission of Ethics (Section 112.3145, Florida Statutes). If appointed to one of these boards, you must file a Form 1, Statement of Financial Interest, with the Flagler County Supervisor of Elections within 30 days of your appointment. These forms will be provided to you when you are appointed or should be available from the Board Secretary at the time you declare a conflict of interest.



## **Please Remember...**

Recommendations that are made by an advisory board are ***always*** considered. But keep in mind these recommendations may not always be followed by the County Commission, as it must take other factors into consideration before making a policy decision.



# *Your Advisory Board Staff Liaison*

## **Staff Members Will:**

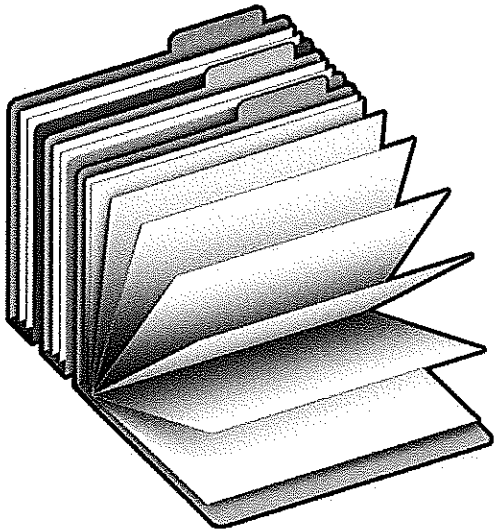
- Provide technical and administrative assistance to the board.
- Provide initial orientation and education for advisory board members.
- Supply background information on agenda items to advisory board members sufficiently in advance of meetings.
- Create the meeting agenda, with help from the board Chair.
- When requested, may make recommendations on agenda items.
- Attend advisory board meetings in a non-voting capacity.
- Inform advisory board members of County Commission actions concerning recommendations and appeals.
- Record attendance.
- Take and distribute meeting minutes.



## *Shared Responsibilities*

### **Board Members and Staff Should:**

- Be on time for meetings.
- Know and practice parliamentary procedure (addressed in this guide).
- Adhere to the Public Records and Sunshine Laws (also in this guide).
- Be familiar with the issues by reviewing background information, the agenda and previous minutes before the meeting.
- Be courteous to each other and to members of the public.
- Be open and responsive to questions and concerns.
- Follow the rule of the Chair during the conduct of meetings including recognition from the Chair prior to speaking except during workshops that are conducted in a more informal manner.



## Public Records Law

Public records are defined as all materials made or received by an agency (including you as a member of an advisory board) in connection with official business which are used to perpetuate, communicate or formalize knowledge.

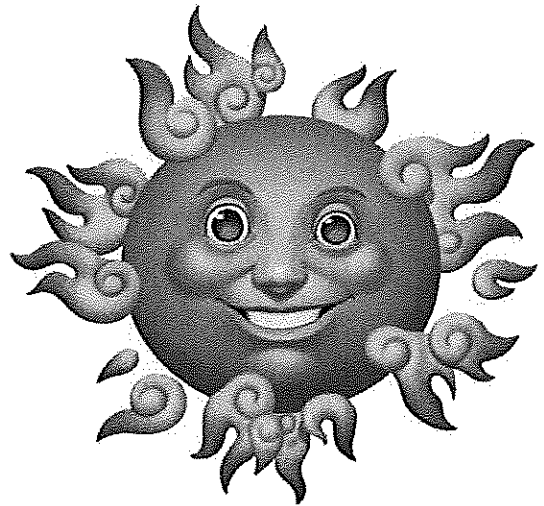
In addition to written documents and personal notes, public records can be tapes, emails, photographs, films, videos or audio recordings. Florida's Public Records Law sets rules for how long these materials must be retained and when they can be destroyed. Your County staff liaison keeps master copies of board agendas, minutes, etc., but you should turn in public records you receive directly from outside the agency to your staff liaison.

## Sunshine Law

Florida's Government-in-the-Sunshine Law was enacted in 1967. It establishes a basic right of access to most meetings of boards, committees and other governing bodies of state and local governmental agencies or authorities.

The Sunshine Law requires:

1. Meetings of boards or committees to be open to the public
2. Reasonable notice of meetings
3. Minutes of the meeting be taken



The intent of the Florida Sunshine Law is to ensure that public business is discussed in public at a scheduled meeting. Any discussion by two or more members of the same body outside of a public meeting about committee business or pending issues to come before the committee is a violation of the Sunshine Law. **Discussion is not limited to face to face interactions, but also include telephone, email, electronic communications (chat room, webcast, etc.) and other written correspondence. Using a "go between" or third party communications is also prohibited.**

# Productive Meetings

You'll become very familiar with meetings as an advisory board member. You'll quickly learn to appreciate meetings that run smoothly, as opposed to those which drag on endlessly. To keep your meetings productive and on track, here are some handy tips.



- Study any background materials beforehand, but don't make up your mind. Additional information may be presented at the meeting, and you'll want to keep an open mind so you can fairly consider all the facts.
- The advisory board Chair is responsible for moving the meeting along. Members should assist with getting to the heart of the issue so a conclusion may be reached in a reasonable amount of time.
- The advisory board may establish and publicize general guidelines governing the length of presentations and public participation. Fifteen minutes is usually enough time for the main presentation. Three minutes is the usual time limit for members of the public to comment on an item but the board can choose to waive the rules when appropriate. Do not interrupt public speakers but do allow the Chair to consider the appropriateness of your inquiry to the speaker.
- After the presentation and public participation, board members may want to ask questions and discuss the issue. The Chair will rule on allowing such discussion to occur.
- The advisory board Chair should try to keep members focused and moving to a conclusion. One way is for the advisory board Chair to occasionally summarize what is being discussed. When the Chair thinks the debate has been brought to a close, and public comments are heard, he/she should "call the question" or ask the members if they are ready to vote. Other board members can also call the question.
- It is important to attend all meetings to obtain a quorum. In the absence of a quorum, the only business that can be transacted is (1) to adjourn; (2) to recess for a period of time within the same day; and (3) to continue any agenda item to a date and time certain.

## **Voting Conflicts**

Simply put, you can't vote on an issue which may either benefit or cause you loss nor benefit or cause loss to an immediate family member, or the business that employs you (special private gain). Special private gain exists if something were to be affected by the vote or there is an ongoing business relationship with someone whose interests would be affected. If a conflict exists...

- Before the issue is discussed, publicly explain the conflict for the record so the information is reflected in the official meeting minutes.
- Do not vote or participate in the board's discussion of the issue unless otherwise advised by the County Attorney who should be informed about the issue before the meeting.
- Within 15 days of the vote, document your conflict in writing (staff will have the form you need to fill out and return)

# Parliamentary Procedure

Imagine a meeting where everyone talks at the same time - not much will get done. Parliamentary procedure promotes the orderly flow of ideas and discussion. Flagler County generally follows *Roberts Rules of Order Newly Revised*, a guide to parliamentary procedure used for more than a century. The rules may be waived by majority vote of the board or by board consensus when there is no member objecting to waiving the rules. Don't worry if at first the process seems confusing. You'll learn the lingo in a short time and, before you know it, the procedures will become second nature.

A key element of parliamentary procedure is the **motion**. There are seven recognized steps in making a motion, as follows:

1. A member asks to be recognized, "Mr. or Madam Chair."
2. The Chair recognizes the member, "Ms. Smith."
3. The member states the motion, "I move the application be approved."
4. Another member (without waiting to be recognized) seconds the motion, "I second the motion," or when the Chair calls for a second, if no second has been volunteered.
5. The Chair repeats the motion and calls for discussion, "It has been moved and seconded that the application be approved. Is there any discussion?"
6. After discussion and public comment, the Chair puts the motion to a vote, "If there is nothing new to be added to the discussion, we are ready to vote. All those in favor of the application being approved say 'aye', followed by the Chair saying "are there any opposed?"
7. The Chair counts the votes and announces the outcome, "The motion passes/fails by a five to four vote" (and states for the official record the names of the members casting the dissenting votes).



**Main Motion:** Only one motion before the group at a time. It cannot be introduced when any other motion is before the group.

**Motion to Amend:** Changes a motion before it comes up for final vote and it takes precedence over the motion to which it applies. There is a limit of two amendments to each motion.

**Substitute Motion:** Amends by substituting another form, changed or additional wording.

## Main Motions

These motions are listed in order of precedence. A motion can be introduced if it is higher on the chart than the pending motion.

Purpose	You Say...	Interrupt?	2nd?	Debate?	Amend?	Vote?
Close meeting	I move to adjourn	No	Yes	No	No	Majority
Take break	I move to recess for...	No	Yes	No	Yes	Majority
Register Complaint	I rise to a question of privilege	Yes	No	No	No	None
Lay aside temporarily	I move to lay the question on the table	No	Yes	No	No	Majority
Close debate	I move the previous question	No	Yes	No	No	2/3
Limit or extend debate	I move that debate be limited to...	No	Yes	No	No	2/3
Table to a time/date certain	I move to table the motion to...	No	Yes	No	No	Majority
Refer to committee	I move to refer the motion to...	No	Yes	Yes	Yes	Majority
Modify wording of motion	I move to amend the motion by...	No	Yes	Yes	Yes	Majority
Kill main motion	I move that the motion be postponed indefinitely	No	Yes	Yes	No	Majority
Add to the agenda	I move that (or "to")...	No	Yes	Yes	No	Majority



**Point of Information:** Generally applies if information is desired from the speaker. "I would like to ask the (speaker) a question."

**Point of Order:** Infraction of the rules, or improper decorum in speaking. Must be raised immediately after the error is made.

## Incidental Motions

No order of precedence. These motions arise incidentally and are decided immediately.

Purpose	You Say...	Interrupt?	2nd?	Debate?	Amend?	Vote?
Enforce Rules	Point of Order	Yes	No	No	No	None
Request for Information	Point of Information	Yes	No	No	No	None
Submit matter to your board	I appeal from the decision of the chair	Yes	Yes	Yes	No	Majority
Suspend Rules	I move to suspend the rules	No	Yes	Yes	No	2/3
Divide motion	I move to divide the question	No	Yes	Yes	Yes	Majority
Parliamentary law question	Parliamentary inquiry	Yes	No	No	No	None

## Motions That Bring a Question Again Before the Body

No order of precedence. Introduce only when nothing else is pending.

Purpose	You Say...	Interrupt?	2nd?	Debate?	Amend?	Vote?
Take matter from table	I move to take from the table...	No	Yes	Yes	No	Majority
Reconsider motion (only a member of the prevailing side can make motion)	I move to reconsider...	No	Yes	Yes	No	Majority

Please do not hesitate to discuss with your staff liaison any concerns or suggestions you may have. We are here to help you at any time. *Parliamentary Procedure information and charts on Roberts Rules Newly Revised motions can be found at [www.RobertsRules.org](http://www.RobertsRules.org).*

ATTACHMENT 2 TO MINUTES OF  
LRRC MEETING MAY 13, 2010

**379.2431 Marine animals; regulation.—**

**(2) PROTECTION OF MANATEES OR SEA COWS.—**

(f)1. Except for emergency rules adopted under s. 120.54, all proposed rules of the commission for which a notice of intended agency action is filed proposing to govern the speed and operation of motorboats for purposes of manatee protection shall be submitted to the counties in which the proposed rules will take effect for review by local rule review committees.

2. No less than 60 days prior to filing a notice of rule development in the Florida Administrative Weekly, as provided in s. 120.54(3)(a), the commission shall notify the counties for which a rule to regulate the speed and operation of motorboats for the protection of manatees is proposed. A county so notified shall establish a rule review committee or several counties may combine rule review committees.

3. The county commission of each county in which a rule to regulate the speed and operation of motorboats for the protection of manatees is proposed shall designate a rule review committee. The designated voting membership of the rule review committee must be comprised of waterway users, such as fishers, boaters, water skiers, other waterway users, as compared to the number of manatee and other environmental advocates. A county commission may designate an existing advisory group as the rule review committee. With regard to each committee, fifty percent of the voting members shall be manatee advocates and other environmental advocates, and fifty percent of the voting members shall be waterway users.

4. The county shall invite other state, federal, county, municipal, or local agency representatives to participate as nonvoting members of the local rule review committee.

5. The county shall provide logistical and administrative staff support to the local rule review committee and may request technical assistance from commission staff.

6. Each local rule review committee shall elect a chair and recording secretary from among its voting members.

7. Commission staff shall submit the proposed rule and supporting data used to develop the rule to the local rule review committees.

8. The local rule review committees shall have 60 days from the date of receipt of the proposed rule to submit a written report to commission members and staff. The local rule review committees may use supporting data supplied by the commission, as well as public testimony which may be collected by the committee, to develop the written report. The report may contain recommended changes to proposed manatee protection zones or speed zones, including a recommendation that no rule be adopted, if that is the decision of the committee.

9. Prior to filing a notice of proposed rulemaking in the Florida Administrative Weekly as provided in s. 120.54(3)(a), the commission staff shall provide a written response to the local rule review committee reports to the appropriate counties, to the commission members, and to the public upon request.

10. In conducting a review of the proposed manatee protection rule, the local rule review committees may address such factors as whether the best available scientific information supports the proposed rule, whether seasonal zones are warranted, and such other factors as may be necessary to balance manatee protection and public access to and use of the waters being regulated under the proposed rule.

11. The written reports submitted by the local rule review committees shall contain a majority opinion. If the majority opinion is not unanimous, a minority opinion shall also be included.

12. The members of the commission shall fully consider any timely submitted written report submitted by a local rule review committee prior to authorizing commission staff to move forward with proposed rulemaking and shall fully consider any timely submitted subsequent reports of the committee prior to adoption of a final rule. The written reports of the local rule review committees and the written responses of the commission staff shall be part of the rulemaking record and may be submitted as evidence regarding the committee's recommendations in any proceeding relating to a rule proposed or adopted pursuant to this subsection.

13. The commission is relieved of any obligations regarding the local rule review committee process created in this paragraph if a timely noticed county commission fails to timely designate the required rule review committee.



ATTACHMENT 3 TO MINUTES OF  
LRRC MEETING MAY 13, 2010



March 8, 2010

**Florida Fish  
and Wildlife  
Conservation  
Commission**

Commissioners  
Rodney Barreto  
Chairman  
Miami

Richard A. Corbett  
Vice Chairman  
Tampa

Kathy Barco  
Jacksonville

Ronald M. Bergeron  
Fort Lauderdale

Dwight Stephenson  
Delray Beach

Kenneth W. Wright  
Winter Park

Brian S. Yablonski  
Tallahassee

Executive Staff  
Nick Wiley  
Executive Director

Greg Holder  
Assistant Executive Director

Karen Ventimiglia  
Deputy Chief of Staff

Imperiled Species  
Management Section  
Kipp Frohlich  
Section Leader  
(850) 922-4330  
(850) 922-4338 fax

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resources for their long-term  
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Tallahassee, Florida  
32399-1600  
Voice: (850) 488-4676

Hearing/speech impaired:  
(800) 955-8771 (T)  
(800) 955-8770 (V)

MyFWC.com

The Honorable George Hanns, Chair  
Flagler County Commission  
1760 East Moody Boulevard, Suite 301  
Bunnell, FL 32110

Dear Chairman Hanns:

The purpose of this letter is three fold. First I want to provide you with some background regarding our state manatee management plan and how it relates to Flagler County. In addition, I will provide you an update on recent activities and progress that we have made related to manatee protection. Lastly, I wanted to let you know about our future plans and also request increased involvement and participation of Flagler County.

The Florida Fish and Wildlife Conservation Commission (FWC) approved a Manatee Management Plan (MMP) in December 2007 to provide a state framework for conserving and managing manatees in Florida. The MMP is complementary to the federal Florida Manatee Recovery Plan, with both plans describing actions that will ensure the manatee's long-term survival. One of the many tasks called for in the MMP is to evaluate areas that currently have little or no manatee protection regulations to determine if new manatee protection zones may be warranted. Flagler County is one of the first areas identified in the MPP for this evaluation. *Flagler*

In recent years we have met with Flagler County staff, the U.S. Fish and Wildlife Service, and stakeholders in regards to a variety of manatee concerns related to state and federal approval of construction of additional marine facilities and potential impacts to manatees. As a part of those meetings it was discussed that there are virtually no state manatee protection zones in Flagler County. The only exception is a small portion of waterway in the southern part of the county which is regulated in the FWC rule for Volusia County (68C-22.012, Fla. Admin. Code). The zones included in the Volusia County rule were adopted in 1991. It was also clear that additional data needed to be collected in this area so that we could better evaluate the potential risks. New manatee distribution data were collected in 2005-07 and aerial surveys were flown in 2007-09 to collect boating data in Flagler County. FWC staff has reviewed these data and other information, and spoken to County staff. Based on our initial review of all information, we believe additional manatee protection zones may be warranted in Flagler County.

Florida Statute § 379.2431(2)(f) prescribes the steps required for the FWC to adopt or amend manatee speed zone rules. While we have informally discussed this with your staff, this letter serves as official notification that we are initiating the next steps of considering manatee protection rules for Flagler County. Pursuant to the statute, Flagler County has 60 days after receipt of this letter to form a Local Rule Review Committee (LRRC) to review the FWC proposal and provide comments and recommendations. Once the LRRC has been formed, we will provide a preliminary rule proposal to the LRRC and the LRRC will then have an additional 60 days to review the proposal and submit its report. (I have enclosed a copy of the statute for your convenience.)

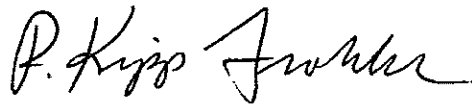
Working through the various issues will take time and it is difficult to predict with certainty a proposed timeline. However, based on our work with other counties, we are

March 8, 2010

hopeful that we could complete the LRRC process by July 2010. If rules are warranted we would hope to present a draft to our Commissioners at the September 2010 FWC meeting, with final presentation and consideration to occur at a subsequent FWC meeting, likely in early 2011. Of course this is a cooperative endeavour and we will work with your staff and the LRRC in regards to scheduling and timing. It should also be noted that there is no predetermined outcome. Working with the LRRC may in fact lead us to develop a draft rule for our Commissioners to consider, but alternatively we may conclude upon further analysis that no additional rules are warranted.

It would be helpful if you could provide us with the name of your designee with whom we should work at a staff-to-staff level as this process moves forward. Mr. Chris Boland on my staff will be taking the lead for the FWC and he can be contacted at [Chris.Boland@MyFWC.com](mailto:Chris.Boland@MyFWC.com). If you have any questions about this letter, the rule making process, or if we could assist you in anyway, please do not hesitate to contact me or Mr. Boland (850 922-4330). We look forward to working with you and Flagler County.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Kipp Frohlich". The signature is fluid and cursive, with the first name "R. Kipp" and the last name "Frohlich" clearly distinguishable.

R. Kipp Frohlich, Section Leader  
Imperiled Species Management Section

Enclosure

# ATTACHMENT 4 TO MINUTES OF LRRC MEETING MAY 13, 2010

## Description of the FWC Manatee Protection Rule Development Process (2010)

The Florida Fish and Wildlife Conservation Commission (FWC) is required to follow the requirements of Chapter 120, Florida Statutes (FS), when performing rule making for manatee protection purposes. The Manatee Sanctuary Act (§379.2431(2), FS) requires several steps in addition to the Chapter 120 process. Rules 68C-22.001 and 68C-22.002, Florida Administrative Code (FAC), provide additional requirements and guidance. The basic steps in the process are described below.

### Step 1: Identify the need to consider rule making

The request or direction to consider rule making can come from a wide variety of sources. Parties external to FWC, including organizations and individuals, can informally request rule making or formally petition the FWC under 120.54, FS. Rule making can be authorized or required by the legislature or the judiciary (courts or DOAH). The FWC Commissioners can direct staff to begin the process, and staff can independently identify the need to consider rule making and seek approval to proceed.

### Step 2: Assimilate/Compile data and assess the need for rule making

Staff determines what data are available and coordinates with other individuals (both internal and external) to compile data and make an initial assessment of the need to proceed further. If the FWC determines that the available data support the need to consider rule making, the process continues. Otherwise, the process stops and the party that requested rule making is notified. This step would normally require between two weeks and several months to complete. The FWC's authority to establish manatee protection zones (and the limitations on that authority) is provided in §379.2431(2), FS, and further clarified in rules 68C-22.001 and 68C-22.002, FAC.

### → Step 3: Notify the affected county government that a rule is being considered

Whenever the FWC considers proposing a manatee protection rule that would regulate the speed and operation of motorboats, §379.2431(2)(f), FS, requires FWC to notify the affected county (or counties). The county must be notified at least 60 days before the FWC files a Notice of Rule Development for publication in the Florida Administrative Weekly (FAW). The county is then required to form a local rule review committee (LRRC). The make-up of the LRRC and its charge are governed by §379.2431(2)(f), FS.

### Step 4: Publish a Notice of Rule Development (NORD)

The Chapter 120 process requires that the FWC publish a NORD in the Florida Administrative Weekly (FAW) before formally proposing to adopt or amend a rule through publication of a Notice of Proposed Rule. A NORD does not have to be published before the LRRC process can begin; it could be published any time after Step 3 (plus 60 days) and before Step 8 (publication of a Notice of Proposed Rule).

**NOTE:** The FWC may hold rule development workshops; however, workshops are optional. Workshops must be noticed in the FAW at least 14 days before being held.

### Step 5: Submit proposed rule and supporting data to LRRC

The FWC is required by §379.2431(2)(f), FS, to submit the proposed rule and supporting data to the LRRC for its use in reviewing the proposed rule. The LRRC then has 60 days to review the proposed rule and submit a written report to the FWC. The LRRC report must contain a majority opinion and may endorse the proposed rule or recommend changes. If the recommendations are not unanimous, the LRRC report must also contain a minority opinion.

Wade  
Alger  
2/4/2

**Step 6: Review LRRC report and prepare staff response**

FWC staff is required by §379.2431(2)(f), FS, to review the LRRC report (including minority opinions if applicable) and to provide a written response to the county and the FWC Commissioners. This step would normally require between two weeks and several months to complete, depending on the size and complexity of the LRRC report.

**Step 7: Authorization to publish a Notice of Proposed Rule**

Following receipt of the LRRC report and the preparation of the staff response, FWC staff prepares a rule proposal for consideration by the FWC Commissioners. The Commissioners are required by §379.2431(2)(f), FS, to fully consider the LRRC report before authorizing the publication of a Notice of Proposed Rule. The Commissioners make the decision to authorize publication of a proposal at a publicly noticed meeting. This typically occurs at one of the regularly scheduled FWC meetings that are held during the course of the year. If the Commissioners authorize rule making, the process continues. Otherwise, the process stops and the party that requested rule making is notified.

**Step 8: Publish a Notice of Proposed Rule**

Publication of this notice in the FAW begins the formal Chapter 120 rule making process. The notice must be published in the FAW at least 28 days before the rule is filed for adoption.

**Step 9: Accept public comments and conduct one or more public hearings**

The Chapter 120 process requires that a public hearing be held if requested by any affected person within 21 days after publication of the Notice of Proposed Rule. Final decisions on manatee protection rules are always made by the FWC Commissioners at a publicly noticed meeting, so at least one public hearing will always be held, even if one is not requested. FWC staff typically conducts an initial public hearing in the affected area within a month after the Notice of Proposed Rule is published. The final public hearing is held by the FWC Commissioners, typically at one of the regularly scheduled FWC meetings that are held during the course of the year. The comment period lasts for 21 days after publication of the notice or through the date of the final public hearing, whichever is longer. As a result, the formal comment period is often open between two and four months.

**Step 10: Review public comments and prepare final staff recommendations**

FWC staff reviews comments received during the public comment period and then develops final staff recommendations for consideration by the FWC Commissioners.

**Step 11: Authorization to adopt rule**

The FWC Commissioners decide whether to adopt a proposed rule (with or without changes) at the final public hearing (see Step 9).

**Step 12: Publish a Notice of Change (NOC)**

The Chapter 120 process requires that a NOC be published if substantive changes are made to the originally published proposed rule. If no changes or only technical changes are made to the proposal, no NOC is needed; however, the Joint Administrative Procedures Committee (JAPC) must be notified in writing at least 7 days before the rule is filed for adoption. Substantive changes must be supported by the record of public hearings, must be in response to written material received on or before the date of the final public

hearing, or must be in response to a proposed objection by JAPC. The NOC must be published in the FAW at least 21 days before the rule is filed for adoption.


**Step 13: File the rule for adoption**

Rules are considered "adopted" when they are filed with the Dept. of State and generally take effect 20 days after adoption. Rules may be filed for adoption no less than 28 days or more than 90 days after the Notice of Proposed Rule is published in the FAW, unless one or more events occur that extend the 90-day limit. See §120.54, FS, for events that extend the limit. If an administrative challenge is filed against the proposed rule pursuant to 120.56, FS, the 90-day period is tolled until the challenge is resolved. Under no circumstances does an agency have less than 90 days to file a rule for adoption.

**NOTE:** If areas for which the FWC adopts regulations are also regulated by other governments and/or for other purposes besides manatee protection, the most restrictive regulation applies and is what is posted.

The information provided above is only a summary of the basic rule making process. There are exceptions and alternatives to some of these steps. Chapter 120 and §379.2431(2), FS, should be consulted for a complete description of the required process. Also see Chapter 1B-30, FAC, (for requirements related to publishing in the FAW and filing rules for adoption), and 28-102 and 28-103, FAC, (for processes required by the Uniform Rules of Procedure).

Scott Calleson  
FWC Imperiled Species Management Section  
2/10/2010

 **FILE**

# Sunshine Law and Public Records Law Highlights

Presented by  
Donna Wyson, Deputy County Attorney,  
May 13, 2010

# Sunshine Law

- **What is meant by the “Sunshine Law?”**
  - The Sunshine Law calls for government in the “sunshine” or “out in the open.”
- **To whom does it apply?**
  - The Sunshine Law applies to all persons appointed or elected to commissions, councils, committees, etc., that carry out the business of government. As an appointed committee member, you must observe these laws.

# Sunshine Law

- **What is the scope of the Sunshine Law?**

Florida's Government-in-the-Sunshine-Law, commonly referred to as the "Sunshine Law", provides a right of access to governmental proceedings at both the state and local levels. The law is applicable to Flagler County's advisory groups that have been delegated the responsibility to make recommendations on matters which may be acted upon by the Board of County Commissioners.

The law is applied to any gathering of two or more members subject to the Sunshine requirements to discuss some matter which may come before the advisory group for action. There are three basic requirements of the Sunshine Law:

- (1) meetings of public boards or commissions must be open to the public; and
- (2) reasonable notice of such meetings must be given; and
- (3) minutes of the meetings must be taken.



# Sunshine Law

- **What types of communications are covered by the Sunshine Law?**

**Personal or telephone conversations, written communications, and the use of computers or other electronics for communications.**

- The Sunshine Law applies to deliberations and discussions between two or more members of an advisory group when those two members are discussing some matter which MAY come before the advisory group. The use of a telephone or a computer to conduct such discussions does not remove the conversation from the requirements of the Sunshine Law. Similarly, members may not utilize anyone as a "go-between" to learn of the views of another member outside the Sunshine.
- Therefore, members seeking to discuss such business should ensure that the requirements of the Sunshine Law have been satisfied.

# Sunshine Law

- **Consequences of Failure to Comply with Sunshine Law Requirements**
  - Failure to comply with the provisions of Florida's Sunshine Law can result in civil penalties up to \$500 against each participating member. A knowing or intentional act is not required.
  - Criminal penalties, including incarceration and fines, can be imposed on any board member or other public officer participating on a public committee who knowingly attends such a meeting or has a prohibited contact in violation of the statute.
  - No resolution, rule, or formal action shall be considered binding except as taken or made at a duly noticed meeting. Actions at public meetings tainted by a Sunshine violation are likewise void.
  - Violation may require the board member to hire private counsel either for private suits or for state attorney actions

# Public Records

- **What is a Public Record?**

The definition of a public record in Chapter 119 is broad and all-inclusive. The statute reads as follows:

- *"Public records" include all documents, papers, letter, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.*
- Stated another way: "If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of an authority." *Government in the Sunshine Manual, p. 61*

# Public Records

- **Examples of Public Records include:**
  - Notes and non-final drafts can be public records.
  - Any agency document or document prepared by a member or members of a governing board advisory body, however prepared, if circulated for review, is a public record regardless of whether it is an official expression of policy or marked "preliminary" or "working draft" or similar label.
  - Examples of such materials would include telephone message slips, interoffice memoranda, preliminary draft reports or proposals which have been submitted for review to anyone within or outside the agency, handwritten notes on a printed report, and working drafts of reports which have been furnished for review. *Id.*

# Public Records

- **Chapter 119, Florida Statutes, Public Records**

Florida's Public Records Law provides for citizens to have virtually unlimited access to the records of government. Chapter 119.07(1)(a) states that:

- Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee.
- Violations can be prosecuted criminally or in civil court by citizens or companies.

# Public Records

- **How should public records requests be handled?**
  - Public records requests, along with any information you may have in response to the request, should be forwarded to Flagler County Communications Manager, Carl Landrie (386-313-4039 or 386-931-6316 or [claundrie@flaglercounty.org](mailto:claundrie@flaglercounty.org)) for documentation purposes. As the official spokesperson for the County, Mr. Landrie will respond to the request.

# Summary of Sunshine & Public Records Law

- Everything you say, do, or write can be considered a public record.
- Follow the Sunshine Law to the letter. Do not converse with your colleagues by phone, letter, email, text mail, etc., about any matters related to your committee.
- All meetings and discussions with two or more elected/appointed officials who serve on the same council or board require public notice.

# **ETHICS FOR PUBLIC APPOINTED OFFICERS**

## **Chapter 112, Part, III, Florida Statutes**

**Voting Conflicts** = A Committee member **MUST ABSTAIN** from voting on a measure which inures to:

1. His or her special private gain or loss; or
2. A relative's special private gain or loss; or
3. The special private gain or loss of a principal by whom he or she is retained; or
4. The special private gain or loss of a business associate.

*Fla. Stat. 112.3143*



**Appointed Officers** = Even though you must abstain, you may participate in the discussion if:

1. You disclose the nature of the conflict before participating in the meeting's discussion; and
2. You complete *Form 8B* and file it with the Board clerk within 15 days of the Board's vote.

## **Voting Requirement at Meetings**

You must vote unless you have a conflict; you cannot abstain for convenience. Fla. Stat. 286.012

## STANDARDS OF CONDUCT

Gifts – Committee members may not solicit or accept anything of value including a gift, loan, reward, promise of future employment, favor, or service based on the understanding that the vote or official action of the Committee member would be influenced thereby.

Misuse of Public Position – Committee members may not use their public position or any property or recourse within their trust to secure a special privilege, benefit or exemption for themselves or others.

Conflicting Employment or Contractual relationship – No Committee member shall have or hold any employment or contractual relationship with any business entity or agency which is subject to the regulation of the Committee for which he sits.

LRRRC MEETING MAY 13, 2010

# FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE	
MAILING ADDRESS		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY	COUNTY	<input type="checkbox"/> CITY	<input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED		NAME OF POLITICAL SUBDIVISION:	
		MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE	

## WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filling the form.

## INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

### ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

**PRIOR TO THE VOTE BEING TAKEN** by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

**WITHIN 15 DAYS AFTER THE VOTE OCCURS** by completing and filling this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

### APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

**IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:**

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

## APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

## DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, \_\_\_\_\_, hereby disclose that on \_\_\_\_\_, 20 \_\_\_\_\_:

(a) A measure came or will come before my agency which (check one)

- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, \_\_\_\_\_;
- ☐ inured to the special gain or loss of my relative, \_\_\_\_\_;
- ☐ inured to the special gain or loss of \_\_\_\_\_, by  
whom I am retained; or
- ☐ inured to the special gain or loss of \_\_\_\_\_, which  
is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

\_\_\_\_\_  
Date Filed

\_\_\_\_\_  
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.